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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Dennis Mendiola

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01/23/2007

INTELLECTUAL PROPERTY LAW GROUP LLP

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SUITE 1205

SAN JOSE, CA 95113

EXAMINER

DASS, HARISH T

ART UNIT

PAPER NUMBER

3693

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/23/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

09/878,338

Applicant(s)

MENDIOLA ET AL.

Examiner

Harish T. Dass

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: Appendix A.

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/02/2006 has been entered.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14, 22-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friedland et al (hereinafter Friedland – US 6,449,601) in view of Kivimaki (WO 00/22906) and Lefeber et al (hereinafter Lefeber – US 2002/0046299).

Re. Claims 1 and 8, Friedland discloses an auction method, system, and requiring that a prospective buyer *or* seller register with the trading and auction *system* before being able to place trading instructions (submit bids), including requiring that said prospective

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buyer or seller provide a phone (Figure 5 # 522) in possession of the prospective buyer or seller [Friedland – Figures 1, 4-11; Abstract; col. 1 lines 20-25; col. 2 line 43 - col. 3 line 22; col. 10 lines 13-61; col. 5 lines 6-14];

Assigning a password to said prospective buyer or seller [Fig. 5 # 510; col. 10 lines 35-36];

Communicating said password to said prospective buyer or seller and receiving a confirmation of said password from said prospective buyer or seller, wherein at least one of said steps of communicating said password and receiving a confirmation of said password are performed using said telephone device's messaging capability [Figure 4; col. 3 lines 52-67; col. 5 lines 6-14; col. 10 lines 13-61 – see Internet-based web page, by mail, by telephone, or by some other communications means];

Activating said prospective buyer or seller's account or trading instruction if said communicated password matches the signed password [col. 3 lines 10-17; col. 10 lines 26-40 – matching password is inherent in Friedland];

Assigning a unique identification number to each product or service for sale or auction at said trading and auction system [Figures 9-10; col. 14 line 44 to col. 15 line 36 – see product name and lot number (lot numbers must be unique to differentiate between different lots like product number)];

Sending messages to a buyer's telephone device concerning offers or bids made by that buyer in relation to a product or service, with the unique identification number of the product or service included in only a sender field of each message protocol messages to the buyer [Figures 10-11; col. 3 lines 22-30; col. 6 lines 14-52; col. 9 line

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65 to col. 10 line 12; col. 14 lines 51-52, col. 14 line 59 to col. 15 line 36 – see lower level protocol header];

Receiving messages concerning a buyer's trading instructions on a product or service from that buyer's telephone device, determining the product or service by extracting and recognizing the unique identification number of the product or service from only a 'Recipient' field of received message protocol messages from the buyer, identifying the buyer by extracting and recognizing the unique identifier of the telephone device (device) from the only sender field of each message from the buyer [Figures 10-11; col. 3 lines 22-30; col. 6 lines 14-52; col. 9 line 65 to col. 10 line 12; col. 14 lines 51-52, col. 14 line 59 to col. 15 line 36].

Re. Claim 1, Friedland does not explicitly disclose unique identifier of a SMS messaging-capable wireless device, wireless communication and parsing a text body of each higher bid short message protocol messages to determine the buyer's trading instructions for that product or service, SMS, and short message protocol, and when the buyer has been outbid or has no longer made a winning offer.

Re. Claim 8, Friedland does not explicitly disclose unique identifier of a SMS messaging-capable wireless device, wireless communication and, SMS, and short message protocol, and concatenating an access identification number with a numeric address pertaining to and recognized by the system for registration purposes, placing said concatenated number in an only 'Sender' field of a SMS message, and sending the password in the SMS message to said buyer or seller'.

However, Lefeber discloses SMS enabled devices (PDAs) [paragraphs 8, 20] and protocol [paragraphs 6, 9, 20], higher bid short message protocol [Figure 4 # 13; paragraphs 61, 70, 73 see also examples which substantially disclose the auction using PDA – see click on hyperlink] and when the buyer has been outbid or has no longer made a winning offer [Figure 4 # 13; paragraphs 61, 70, 73-74; - see also examples, also customized fulfillment webpage] to enable user with web enabled device (PDA) to participate in auction using customized webpage and URL.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Friedland and include SMS enabled devices (such as PDAs) as disclosed by Lefeber, to enable users of SMS enabled device to participate in auctions from any where with being in from of their PC/computer using wireless technology.

Kivimaki explicitly discloses, SMSC, electronic auctions using mobile phone or wireless internet and unique identifier of a messaging-capable wireless device and SQL server (SQL database engine is well known which includes parsing a text body and extracting/identifying different fields (each message to from the buyer determine the buyer's trading instructions for that product or service), [Abstract; Figures 1-2, 3 (#360-380), 4 (#410-420); page 4 lines 10-35 and claims 2, 7-8 (see product identifier (which has be unique number otherwise how to manage multiple products such as known universal bar code, seller/auctioneer assigned number, etc), and purchase offer identifier which points out to specific product); (see and identifier fields, which points out that every shot message has number of fields separated by two characters which are

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used to identified different fields, where these fields are parsed using the two characters which are delimiters – Note: parsing text/data message are known to one ordinary skilled in the art)], and SMS [abstract], short message protocol [page 7 lines 30 (communication standard such as GSM) – note: communication protocols are set of rules or standard for connecting devices for exchange of information as defined in Microsoft Computer Dictionary, 2002] to enable the system to exchange messages with commonly used standardized protocol such as GSM, etc. instead of customize system which may have negative market impact.

Kivimaki, further, discloses concatenating an access identification number with a numeric address pertaining to and recognized by the system for registration purposes, placing said concatenated number in an only 'Sender' field of a SMS message, and sending the password in the SMS message to said buyer or seller' [figure 5; page 10 lines 4-9 (information for authenticating the buyer), lines 15-25 (maximum length of 160 characters is concatenation of fields which can include identification number, etc.); page 8 lines 20-31; page 9 lines 1-7] which is important for binding the buyer with the acceptance of offer to purchase a product.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Friedland and Lefeber and include transmitting and receiving short messages (e.g. 160 characters) to and from registered buyer using SMS wireless communication system, as discloses by Kivimaki, to enable the users (buyer) to use SMS wireless people to do business while they are on road to enable buyer/seller to participate in auction using wireless device without

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continuously monitoring the auction state/status and also enable the participating buyer (auction participant) to pay for the product using his/her subscriber's account of wireless device, where the settlement is added to accumulated value of calls/messages of the subscriber.

Re. Claim 2 Kivimaki further discloses requiring that a buyer authenticate their identity with the trading and auction *system* when placing their first trading instruction in relation to a product or service by an exchange of messages between the trading and auction *system*, in which at least one of said messages are sent or received using said wireless device's messaging capability [Abstract; Figures 1-4; col. 4 lines 10-35; col. 7 line 27 to col. 8 line 9].

Re. Claim 3 Friedland wherein said step of communicating said password to said prospective buyer or seller is performed over a computer network, and said step of receiving a confirmation of said password from said prospective buyer or seller is performed using said wireless device's messaging capability [Figures 5-6; col. 2 line 65 to col. 3 line 22; col. 5 lines 6-14; col. 9 lines 1-63; col. 10 lines 13-61 – see Internet-based web page, by mail, by telephone, or by some other communications means (may include wireless devices)].

Re. Claim 4 Friedland wherein said step of communicating said password to said prospective buyer or seller is performed using said wireless device's messaging



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capability, and said step of receiving a confirmation of said password from said prospective buyer or seller is performed over a computer network [Figures 5-6; col. 2 line 65 to col. 3 line 22; col. 5 lines 6-14; col. 9 lines 1-63; col. 10 lines 13-61 – see Internet-based web page, by mail, by telephone, or by some other communications means (may include wireless devices such as cellular phone or wireless internet)].

Re. Claims 5-7 and 12-14, Kivimaki further discloses wherein said wireless device is a serviced by a GSM network including a SMSC server to control and manage SMS to and from said wireless device, wherein said trading and auction *system* is in direct communication with said SMSC server, wherein said step of sending messages to a buyer's SMS message-capable wireless device includes the step concatenating an access identification number with the unique identification number of the product or service being bid and placing said concatenated number in only the sender field of each message to buyer, said SMSC server using the access identification number to identify whether SMS message from the SMS messaging-capable wireless devices destined for said trading and auction *system* and to forward such destined SMS message directly to the trading and auction *system*, wherein said trading and auction *system* is connected to said SMSC server via a computer network [Abstract; Figures 1-2; col. 4 line 5 to col. 5 line 12; col. 6 line 35 to col. 8 line 9]. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Friedland and Lefeber and include the above features disclosed by Kivimaki, to

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enable user to use SMS enabled device to communicate with SMSC servers fro buying a product.

Re. Claim 9, claim 9 is substantially similar to claim 2, therefore claim 9 is rejected with same rational as claim 2.

Re. Claim 10, claim 10 is substantially similar to claim 3, therefore claim 10 is rejected with same rational as claim 3.

Re. Claim 11, claim 11 is substantially similar to claim 4, therefore claim 11 is rejected with same rational as claim 4.

Re. Claims 22, 27 and 30, claims 22, 27 and 30 are substantially similar to claims 1 and 8 (see above), therefore claims 22, 30 and 27 are rejected with same rational as claims 1 and 8.

Re. Claims 23 and 31, claims 23 and 31 are substantially similar to claim 2, therefore claims 23 and 31 are rejected with same rational as claim 2.

Re. Claims 24-26, 28-29 and 32-34, claims 24-26, 28-29 and 32-34 are substantially similar to claims 5-7, therefore claims 24-26, 28-29 and 32-34 are rejected with same rational as claims 5-7.

Claims 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friedland in view of Lefeber et al (hereinafter Lefeber – US 2002/0046299).

Re. Claim 15 Friedland discloses an auction method, system, and assigning a unique identification number to each product *or* service for sale *or* auction at said trading and auction system [Figures 9-10; col. 14 line 44 to col. 15 line 36 – see product name and lot number];

Sending messages to a buyer's telephone device concerning offers *or* bids made by that buyer in relation to a product *or* service, with the unique identification number of the product *or* service included in an only sender field of each message, protocol messages to the buyer [Figures 10-11; col. 3 lines 22-30; col. 6 lines 14-52; col. 9 line 65 to col. 10 line 12; col. 14 lines 51-52, col. 14 line 59 to col. 15 line 36 – see lower level protocol header];

Receiving messages concerning a buyer's trading instructions on a product *or* service from that buyer's wireless device, determining the product *or* service by extracting and recognizing the unique identification number of the product *or* service from an only recipient field of received message protocol messages from the buyer, identifying the buyer by extracting and recognizing the unique identifier of the wireless device from the sender field of each message and parsing a text body of each message to determine the buyer's trading instructions for that product *or* service [Figures 10-11;

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col. 3 lines 22-30; col. 6 lines 14-52; col. 9 line 65 to col. 10 line 12; col. 14 lines 51-52, col. 14 line 59 to col. 15 line 36].

Friedland does not explicitly disclose SMS messaging-capable (wireless communication) and higher bid short message protocol, and when the buyer has been outbid or has no longer made a winning offer. However

However, Lefeber discloses SMS enabled devices (PDAs) [paragraphs 8, 20] and protocol [paragraphs 6, 9, 20], higher bid short message protocol [Figure 4 # 13; paragraphs 61, 70, 73 see also examples which substantially disclose the auction using PDA – see click on hyperlink] and when the buyer has been outbid or has no longer made a winning offer [Figure 4 # 13; paragraphs 61, 70, 73-74; - see also examples, also customized fulfillment webpage] to enable user with web enabled device (PDA) to participate in auction using customized webpage and URL.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Friedland and include SMS enabled devices (such as PDAs) as disclosed by Lefeber, to enable users of SMS enabled device to participate in auctions from any where with being in from of their PC/computer using wireless technology.

Re. Claim 16, claim 16 is substantially similar to claim 2, therefore claim 16 is rejected with same rational as claim 2.

Re. Claim 17, claim 17 is substantially similar to claim 3, therefore claim 17 is rejected with same rational as claim 3.

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Re. Claim 18, claim 18 is substantially similar to claim 4, therefore claim 18 is rejected with same rational as claim 4.

Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friedland and Lefeber as applied to claim 15 above, and further in view of Kivimaki.

Re. Claims 19-21, claims 19-21 are substantially similar to claims 5-7, therefore claims 19-21 are rejected with same rational as claims 5-7.

### ***Response to Arguments***

3. Applicant's arguments filed 11/02/2006 have been fully considered but they are not persuasive, the arguments with respect to pending claims are moot in view of the above rejection.

In response to applicant's argument that an SMS message is sent wherein the UNI is in "only a Sender field ..." (page 16). In order to distinguish which product is bid by whom, and alert the bidder if he is a winner/loser, a message have to identify the product. Product identifier disclosed by Kivimaki is a unique number. Specification does not describe what is significant of sending a unique identifier in sender's field which is patentable distinct than printing invoice number with account number of purchaser to every page of the invoice, or account statement to relate the purchaser/biller and related deal (product), etc which allows the parties to communicate using invoice/account

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number correctly about a particular product/sale, etc, or header of message in packets of data communication, etc.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant is required under 37 CFR ' 1.111 (c) to consider the references fully when responding to this action.

Business Editors "AuctionAnything.com Teams With Datalink.net to Wirelessly Enable Auctions; Auction Enthusiasts to Receive Alerts to Their Existing Pager, PCS phone or PDA" Business Wire. New York: Jul 27, 1999. pg. 1 discloses AuctionAnything.com, Inc. (OTC BB: UBUY) announced today that it has teamed with Datalink.net (OTC BB: NETD), a world leader in Web-to- Wireless convergence, to offer wireless notification services to participants in AuctionAnything.com's family of Internet auctions. Datalink.net will provide the wireless gateway that will enable program participants to be notified by pager, PCS phone or PDA when an auction event is triggered.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harish T. Dass whose telephone number is 571-272-6793. The examiner can normally be reached on 8:00 AM to 4:50 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James A. Kramer can be reached on 571-272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Harish T Dass  
Examiner  
Art Unit 3693

*Harish T Dass*

01/18/07

***Attachment A***

**Requirement for Information Under 37 C.F.R. § 1.105**

1. Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

2. The information is required to identify products and/or services embodying the disclosed subject matter of providing bases for SMS protocols where the sender's field include other information and known SMS protocols that the applicant is aware of. Examiner search has found an article which discloses auctionanything.com using PCS phones and PDA for receiving alerts and Xpresslink Platform.

3. The fee and certification requirements of 37 CFR 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within the scope of the requirement under 37 CFR 1.105 that are included in the applicant's first complete communication responding to this requirement. Any supplemental replies subsequent to the first communication responding to this requirement and any information disclosures beyond the scope of this requirement under 37 CFR 1.105 are subject to the fee and certification requirements of 37 CFR 1.97 where appropriate.

4. In responding to those requirements that require copies of documents, where the document is a bound text or a single article over 50 pages, the requirement may be met by providing copies of those pages that provide the particular subject matter



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indicated in the requirement, or where such subject matter is not indicated, the subject matter found in applicant's disclosure.

6. The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. Where the applicant does not have or cannot readily obtain an item of required information, a statement that the item is unknown or cannot be readily obtained will be accepted as a complete reply to the requirement for that item.

7. This requirement is subject to the provisions of 37 CFR 1.134, 1.135 and 1.136 and has a shortened statutory period of 2 months. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).